IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4636 of 2005
WITH
SPECIAL CIVIL APPLICATION No. 5143 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PATEL KIRITBHAI JADAVBHAI - Petitioner
Versus
PATEL AMRATBHAI SHANKARBHAI & 2 - Respondents

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Appearance :

1. S.C.A. No. 4636 of 2005

MR RN SHAH for Petitioner.
MR BM MANGUKIYA for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 - 2.
MS SNEHA A JOSHI for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 – 3.

2. S.C.A. No. 5143 of 2005

MR BM MANGUKIYA for Petitioners.
MR RN SHAH for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/11/2006

ORAL JUDGMENT

1. Since both these petitions are filed challenging the same order of learned Assistant Sessions Judge, Sabarkantha, Camp at Modasa dated 14.02.2005 passed in C.A.F.O. No. 22 of 2002 and since both these matters are heard together, the same are being disposed of by this common judgment and order.

2. Special Civil Application No. 4636 of 2005 is filed by the petitioner - original plaintiff praying for quashing and setting aside the order dated 14.02.2005 passed

by the learned Assistant Sessions Judge, Sabarkantha, Camp at Modasa reversing the order passed by the learned Civil Judge (J.D.), Modasa below an application Exh. 5 dated 04.07.2002 in Regular Civil Suit No. 62 of 2002.

3. Special Civil Application No. 5143 of 2005 is filed by the petitioners - original defendants praying for quashing and setting aside the order dated 04.07.2002 passed by the learned Joint Civil Judge (J.D.), Modasa below an application Exh. 19 in Regular Civil Suit No. 62 of 2002 and also the order dated 14.02.2005 passed by the learned Assistant Sessions Judge Sabarkantha, Camp at Modasa in C.A.F.O. No. 22 of 2002 to the extent that the learned Assistant Sessions Judge has refused to interfere with the order dated 04.07.2002 passed below application Exh. 19.

4. Heard Mr. R.N. Shah, learned advocate appearing for the original plaintiff and Mr. B.M. Mangukiya, learned advocate appearing for the original

defendants in both these petitions.

5. The case of the original plaintiff in the suit was that the plaintiff has filed Regular Civil Suit No. 62 of 2002 in the Court of Civil Judge (J.D.), Modasa for permanent injunction against the defendant Nos. 1 & 2 by contending, inter alia, that there was an agreement to sell in favour of the plaintiff by the defendants with regard to the disputed land being Survey No. 109/1, Block No. 164 admeasuring about 2 Acres 3 Gunthas on 01.04.1971 for a sum of Rs.17,140/-. It is also the case of the plaintiff that the plaintiff was in possession of the disputed land since 1971. During the period from 1993 to 1999, there is a canal under the Vatrak Irrigation Scheme for the purpose of irrigation and the plaintiff cultivated the said land by taking water from the Canal and paid water charges and produced receipt thereof. The plaintiff has spent huge amount for making the said land cultivable. Since the price of the land has increased for more than five times, the defendants have tried to disturb the possession of

the land and hence, the plaintiff has filed the above referred suit.

6. The plaintiff has moved an application Exh. 5 in the said suit seeking interim relief restraining the defendants from disturbing the possession of the plaintiff. The defendant deceased Shankarbhai Ganeshbhai Patel has filed counter application Exh. 19 seeking relief of ad-interim injunction against the plaintiff by contending inter alia that the land in question belonged to joint family of the defendant Nos. 1 to 3 and on partition, the said land has come into the share of the defendant Nos. 1 & 2. It was alleged in the said application that they are jointly in possession of the said land.

7. It is also found from the record of the case that the plaintiff has made an application to the Mamlatdar and to the Circle Officer on 01.06.2002 for mutation of his name and his name was mutated on 10.06.2002. Being aggrieved by the said mutation entry, the defendants preferred an appeal on

21.06.2002 and interim stay was granted. Ultimately, the same was vacated. Against this, an appeal was preferred before the Deputy Collector and the said appeal was allowed by the Deputy Collector. The plaintiff being aggrieved by the said order of the Deputy Collector preferred Revision Application which is also rejected by the Collector vide his order dated 18.08.2006. A copy of this order is placed on record by Mr. Mangukiya.

8. As far as Civil Suit is concerned, applications Exh. 5 & 19 came up for hearing and ultimately, the learned Civil Judge (J.D.), Modasa by an order dated 04.07.2002 granted the application Exh. 5 filed by the plaintiff and rejected application Exh. 19 filed by defendant Nos. 1 & 2.

9. Being aggrieved by the order and judgment of the learned Civil Judge (J.D.), Modasa, the defendants preferred Appeal From Order No. 22 of 2002 challenging the order granting application Exh. 5 as well as the order rejecting application Exh. 19 filed

by the defendants. The said appeal came up for hearing before the learned Assistant Sessions Judge, Sabarkantha, Camp at Modasa who, vide order dated 14.02.2005, allowed the appeal with regard to the order passed below Exh. 5 and set aside the said order whereas he confirmed the order passed below Exh. 19 whereby he has confirmed the order of the learned Civil Judge (J.D.), Modasa rejecting the application Exh. 19.

10. Being aggrieved by the said order, the plaintiff as well as defendants both have come before this Court by filing these two writ petitions.

11. Mr. R.N. Shah, learned advocate appearing for the plaintiff in both these matters has submitted that by virtue of an agreement to sell executed in favour of the plaintiff on 01.04.1971, the plaintiff is in possession of the disputed land and he has been cultivating the said land. Since the possession was sought to be disturbed by the defendants, the plaintiff preferred the suit before the learned Civil

Judge (J.D.), Modasa for permanent injunction and interim relief was granted protecting the possession of the plaintiff. He has further submitted that despite the fact that the defendants have filed an application at Exh. 19, the same was not granted by the learned Civil Judge (J.D.), Modasa. The learned Assistant Sessions Judge has however, partly reversed the order of the learned Civil Judge (J.D.), Modasa and set aside the order of the learned Civil Judge (J.D.), Modasa so far as grant of injunction application is concerned. However, at the same time, the learned Assistant Sessions Judge has not accepted the submissions canvassed on behalf of the defendants and did not grant protection to the defendants against the plaintiff. Though both the petitions are admitted by this Court on 22.03.2005, in the petition filed by the plaintiff, interim relief in terms of para 12 (C) is granted by this Court and the said interim relief is still operative. In other words, the injunction granted by the learned Civil Judge (J.D.), Modasa below an application Exh. 5 is still in force and hence, the plaintiff may be protected till

the suit is finally disposed of.

12. Mr. B.M. Mangukiya, learned advocate appearing for the defendants in both these petitions, on the other hand, has submitted that the learned Assistant Sessions Judge has not accepted the possession of the plaintiff. Not only this, the revenue proceedings are also decided in favour of the defendants and the last order passed by the Collector in the Revision application moved the plaintiff is also in favour of the defendants. He has, therefore, submitted that no interim relief can be said to be in force in favour of the plaintiff. He has, therefore, submitted that the petition filed by the plaintiff is required to be dismissed and the petition filed by the defendants is required to be allowed.

13. After having heard learned advocates appearing for the respective parties and after having gone through the contents of both the petitions as well as the documents attached therewith, the Court is of the view that both these petitions are filed against

interim orders and at this stage, it is difficult to say anything with regard to the possession of the disputed property. Even while disposing of the appeal, the learned Assistant Sessions Judge has observed in more than one place that it requires trial and the issue can be decided by leading evidence and after considering the documentary as well oral evidence led by the parties before the Trial Court, the issue can be resolved. It is also settled position in law that title of the property can be decided only by the Civil Court and revenue proceedings will not have any bearing so far as the title is concerned. Revenue entries may not conclusively establish the possession. Considering all these aspects of the matter and without expressing any opinion with regard to the possession of the property, the Court thinks it proper to dispose of both these petitions by issuing necessary direction to the learned Civil Judge (J.D.), Modasa to dispose of Regular Civil Suit No. 62 of 2002 as expeditiously as possible, preferably within a period of six months from the date of receipt of writ from this Court or certified copy of this order,

whichever is earlier. The directions are issued accordingly. Till the suit is disposed of, status-quo as to the possession of the disputed land may be maintained by both the parties. Needless to state that whatever possession the plaintiff was having on the date of filing suit was initially protected by the trial Court and thereafter by this Court while granting interim relief in terms of para 12 (c) of the petition. It is further clarified that while deciding the suit, the learned Trial Judge may not be influenced by any of the orders passed earlier in these proceedings earlier including this order and decide the suit on the basis of materials available on record and evidence led by the parties.

14. Subject to the aforesaid directions and observations, the impugned orders are quashed and set aside and both these petitions are accordingly disposed of without any order as to costs.

[K.A. PUJ, J.]

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